

**Tentative Rulings for September 26, 2003
Departments 22, 70, 72, 73**

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, Rule 321(c).)

02CECG04179 Charnin v. Miller (Dept. 22)

03CECG01722 Smith v. Sun Health Care Group (Dept. 22)

(Tentative Rulings begin at next page)

Tentative Ruling

Re: **Gallegos v. American Medical Services et al**
Superior Court Case No. 01CECG03717

Hearing Date: September 26, 2003 **(Dept. 22)**

Motion: By defendant AMS for summary judgment/
summary adjudication

Tentative Ruling: To deny

Explanation:

As an initial matter, the court notes that defendant Coppola was dismissed from this action with prejudice on 8/28/03, and thus his summary judgment motion is moot.

Defendant, American Medical Services (“AMS”) contends that its duty is to provide services in a manner that is not grossly negligent or in bad faith and that it did so. Alternatively, AMS contends the undisputed facts show its conduct did not cause any injury to plaintiffs’ decedent.

The court must first determine the applicable standard of care in relation to AMS. As mentioned, AMS contends its duty is to perform services in a manner that is not grossly negligent or in bad faith, citing Health & Safety Code §1799.106, or alternatively §1799.108.

Section 1799.106, by its express terms, applies to services provided by firefighters, police officers, other law enforcement officers, or EMTs. The statute goes on to say that “a public agency employing such a firefighter, police officer or other law enforcement officer [or] EMT...shall not be liable for civil damages if [the employee] is not liable.” The legislature could have, but did not, provide protection for “any” agency employing these types of medical service providers, and thus AMS is not protected by the statute, even if Roger Coppola is.

Section 1799.108 provides a limitation on liability for “any person who has a certificate issued pursuant to this division from a certifying agency to provide pre-hospital emergency field care treatment at the scene of an emergency as defined in §1799.102.” AMS has cited no authority supporting the conclusion that a private ambulance company is within the scope of this statute. Nor has it offered evidence that it (as opposed to its employees) holds the required certificate under Division 2.5 of the Health & Safety Code.

With respect to the issue of causation, though it has submitted competent expert testimony to the effect that nothing its employees did or did not do contributed to the injuries or demise of plaintiffs' decedent, plaintiffs have submitted equally competent evidence that controverts Dr. Panacek's claim that Cheryl Gallegos would have had a less than 50% chance of survival had the paramedics reached her at least two minutes earlier. Plaintiffs' evidence in the form of Dr. Lineback's expert opinion regarding the difference two minutes would likely have made, coupled with the testimony of Brent and Kevin Gallegos, James Page, and the three AMS employees recently deposed is sufficient to raise a triable issue of fact as to whether anything AMS did or did not do substantially contributed to the injuries of plaintiffs' decedent.

Pursuant to California Rules of Court, Rule 391, subd. (a), and Code of Civil Procedure §1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling **DSB** **9-24-03**

Issued By: _____ **on** _____

(Judge's Initials) (Date)

Tentative Ruling

Re: **Crane v. Bentley**
Superior Court Case No. 02CECG04587

Hearing Date: September 26, 2003 **(Dept. 22)**

Motion: By defendant to compel plaintiff's response to form interrogatories and request for production of documents, attendance at deposition, and monetary sanctions

Tentative Ruling:

To grant motion to compel but to deny monetary sanctions without prejudice.

Explanation:

The moving papers establish that plaintiff's counsel was properly served with the discovery requests and deposition notice on 4/23/03, that this information was relayed to plaintiff by her former attorney after he substituted out of the case, and that responses to the written discovery have not been received, nor did plaintiff appear for her properly noticed deposition.

Under the circumstances, defendant is entitled to an order compelling plaintiff to respond to the discovery and appear for deposition, and she is ordered to provide written responses, without objection, within 10 days of service of this notice, and to produce the requested documents within 20 days of service of this notice. She is also directed to appear for deposition at a date specified by defense counsel in a notice that is to be re-served on her at least 10 days before the new scheduled date.

However there is no evidence that defense counsel complied with CCP §2025(j)(3) by contacting plaintiff, after she failed to appear, to inquire about the non-appearance. Additionally, the zip code listed on the proof of service of this motion is not the one listed on the substitution notice or with the US Postal Service, and the Pismo Beach address has not been confirmed by plaintiff as an address of record.

Therefore, defendant's request for monetary sanctions is denied, without prejudice to defendant seeking reimbursement for these expenses, and seeking other sanctions available under CCP §2023, up to

and including issue, evidence or terminating sanctions, if plaintiff fails to comply with this order after it is properly served.

Pursuant to California Rules of Court, Rule 391, subd. (a), and Code of Civil Procedure §1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling **DSB** **9-24-03**

Issued By: _____ on _____.
 (Judge's Initials) (Date)

Tentative Ruling

Re: **Comerica Bank – California v. Creations
Manufacturing, Inc.**
Superior Court Case No. 03CECG01980

Hearing Date: September 26, 2003 **(Dept. 22)**

Motion: Of Receiver for Approval of Receiver's Report and for Approval of Receiver's Administrative Fees and Costs

Tentative Ruling:

To deny, without prejudice.

Explanation:

The receiver has failed to comply with Calif. Rules of Court (“CRC”) Rule 1906(a)(3), which requires an itemization of the services performed, and a “breakdown of the services by 1/10 hour increments.” As a result, there is no way for the Court to determine whether the fees requested are fair and reflect the value of the services performed. (CRC 1907(a))

Furthermore, while the narrative report presumably includes services performed up through July 31, 2003, the receiver requests approval and payment of fees incurred only through June 27, 2003, and expenses incurred only through July 15, 2003. The Court has a concern about these inconsistent and varying dates, as they tend to create confusion now and will create additional confusion when subsequent reports are filed. It seems that if the narrative report covers activities that occurred from June 9 through July 31, then the fees and expenses incurred and requested should cover the same period of time.

Pursuant to CRC 391(a) and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling **DSB** **9-24-03**

Issued By: _____ **on** _____.
 (Judge's Initials) (Date)

Tentative Ruling

Re: **In re Lakeisha Young, Lakasha Young**
Superior Court Case No. 03CECG03068

Hearing Date: September 26, 2003 **(Dept. 22)**

Motion: Petitions to compromise minor's claim

Tentative Ruling:

To deny without prejudice. Petitioner may file verified amended petitions that cure the defects listed below. Petitioner must obtain a new hearing date for the amended petitions.

Explanation:

There are no doctors' reports containing a diagnosis of and prognosis for the injury, and a report of the minors' present condition. (Cal. Rules of Court, rule 7.950(4).)

For Lakeisha only, the petition says the total balance after payment of fees and expenses is -0-, which is clearly in error as the proposed order indicates that she will receive 2,446.62. (Cal. Rules of Court, rule 7.950(7).)

For Lakasha only, the petition says no medical expenses are owed on her behalf, which is clearly in error as the proposed order says that 3,189.00 is owed. (Cal. Rules of Court, rule 7.950(5).)

There is no explanation of whether the pendency or disposition of the petitioner's claim on her own behalf has in any way affected the proposed compromise of the claim of the two minors. (Cal. Rules of Court, rule 7.950(10).)

Both petitions state that the attorney is not representing any other party involved in the matter, when it appears that he is representing both minors and petitioner. (Cal. Rules of Court, rule 7.951(3).)

Pursuant to California Rules of Court, rule 391, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

DSB

9-25-03

Issued By: _____ **on** _____.

(Judge's initials) (Date)